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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7401 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT ELECTRICITY BOARD

Versus

TAKOREBHAI M CHAUHAN

Appearance:

MR SP HASURKAR for Petitioner

MR BA VAISHNAV for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 02/03/2001

ORAL JUDGEMENT

Rule. Service of rule is waived by learned advocate Shri B.A.Vaishnav appearing for the respondent. The petitioner has challenged the validity of an award dated 31st July, 1999 passed by the Labour Court, Nadiad

in Ref.(LCN) No.22/86.

2. The respondent was working as a junior clerk under the petitioner. It was alleged that he had misconducted and therefore departmental proceedings had been initiated against him and as a result of which, by order dated 26.7.73 the Superintending Engineer of the petitioner had imposed punishment of stoppage of three increments with future effect. Being aggrieved by the said order of punishment an appeal was preferred by the respondent and, in the appeal, the order dated 26.7.73 was set aside and the appellate authority had directed that de-novo enquiry should be held against the respondent.

3. In pursuance of the above referred decision taken in the departmental appeal, de novo inquiry had been initiated and by an order dated 3.4.75 the service of the respondent was terminated. The respondent was aggrieved by the order of dismissal and therefore an appeal was preferred by the respondent and the said appeal was allowed. The order of termination was set aside and the order of termination was substituted by stoppage of four increments with future effect. The respondent, still being aggrieved by the order of the said punishment, preferred an appeal to the Chairman of the petitioner-Board. The Chairman passed an order dated 5.1.1977 whereby it was ordered that the service of the respondent should be terminated.

4. Being aggrieved by the order of termination dated 5.1.1977, the respondent had raised a dispute and ultimately the matter was referred to the Labour Court, Nadiad by way of reference. After hearing the concerned parties and upon perusal of the record, the Labour Court, Nadiad came to the conclusion that the charge levelled against the respondent was not proved and therefore the order of termination was set aside by the Labour Court.

5. Being aggrieved by the award passed by the Labour Court, Nadiad, the petitioner has approached this court by way of this petition.

6. At the time of hearing of this petition, learned Advocate Shri Hasurkar appearing for the petitioner has submitted that the award of the Labour Court is bad in law for the reason that it was not open to the Labour Court to set aside the order of termination which was just and legal.

7. On the other hand, learned advocate Shri Vaishnav

appearing for the respondent has submitted that it was not open to the Chairman of the petitioner-Board to terminate the service of the respondent especially when the lower appellate authority had reduced the punishment to stoppage of four increments with future effect. It has been submitted by Mr.Vaishnav that in an appeal filed by the respondent, the Chairman of the petitioner could not have enhanced the punishment without giving any notice to the respondent and, more particularly, when the Chairman of the petitioner had no power to revise the order passed by the Superintending Engineer, who was an appellate authority.

8. During the pendency of this petition, Learned Advocate Shri Vaishnav appearing for the respondent has put a proposal to learned Advocate Shri Hasurkar that instead of 100% backwages, the respondent is prepared to accept backwages to the tune of 40% to 45% and would submit his resignation in case the punishment which was inflicted upon him by the Superintending Engineer is confirmed. It has been further submitted by him that the respondent is suffering from a neurological disease and it would not be possible for him to perform his duties. It has been submitted by him that the respondent has already completed 56 years of age and is likely to be superannuated within two years. In the circumstances, the respondent would like to submit his resignation with effect from the date of the award.

9. Mr.Hasurkar has fairly submitted that if the respondent is not in a position to perform his duties, it would not be worthwhile to reinstate him in service and therefore he has submitted that if the respondent is prepared to submit his resignation with effect from the date of passing of the award, the petitioner shall accept the resignation with effect from the date of passing of the award.

10. In view of the agreement and understanding arrived at between the counsel for the parties, it is directed that the respondent shall not be reinstated in service, but he shall be paid 40% backwages from the date of termination till the date of passing of the award. Punishment shall be imposed upon the respondent to the effect that his four increments with future effect shall be stopped. The respondent shall submit his resignation within one month from today which should be with effect from 31st July, 1999. It has been submitted by Mr.Hasurkar that the said resignation shall be accepted by the petitioner.

11. In the circumstances, the award of the Labour Court is modified to the effect that the amount of backwages as directed hereinabve together with other retiral benefits shall be paid to the respondent preferably within three months from the date of submission of his resignation and punishment of stoppage of four increments with future effect shall be imposed upon the respondent. Rule is made absolute to the above extent with no order as to costs.

2.3.2001 (A.R.DAVE,J)